

REMARKS

Record is made of a telephone conference had with the Examiner on February 27, 2008 at which the application was discussed as well as a proposed amendment for placing the application in condition for allowance. The Examiner is thanked for all of the courtesies extended by him to the undersigned during the conference.

Claims 2-5, 7, 8, 10, 13-22 are pending in this application. Of these, claims 2-5 and 13-20 have been withdrawn from consideration. Claim 21 and 22 have been amended. The amendment does not introduce new matter, as the amendment is supported by the disclosure at page 4, paragraph 3, page 5, paragraph 2, page 6, line 15 to page 7, line 2, and Figure 4.

Claim Objections

Applicant submitted two sets of claims on September 20, 2007, a marked-up copy and a clean copy. The clean copy should be disregarded since it fails to incorporate any of the amendments submitted in response to the office action of 5/18/07. Applicant regrets the confusion associated with the two differing versions of claims.

Claim Rejections under 35 U.S.C. 102

Claims 6-12 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by McIntyre (US Pat. 3,746,066).

Claims 6, 9, 11 and 12 are canceled.

The independent claim 21, as amended, is not anticipated by McIntyre. Firstly, McIntyre does not teach the non-adjustable sutures, as parts 6a and 6b of McIntyre are both adjustable. Secondly, in McIntyre the cinch ring (top of Figure 2 extending down to 16 as read by the Examiner) is a part of the hollow cap or casing pouch. In contrast, the

cinch ring is a separate entity from the hollow cap or casing pouch in the present application and in claim 21 as amended. Thirdly, McIntyre teaches an extendable bag (*see all of the claims and column 1, line 50 et. seq.*) while the present application teaches and claims a hollow cap or casing pouch, which is made of a medically safe flexible or pliable material. The cap or casing pouch is dimensioned to be placed over and to fit snugly around and to encapsulate the projecting parts of the instrumentation for preventing irritation or injury attributable to instrumentation which has been installed in the bone (paragraph 3, page 6-7 of the application).

The lower cinch ring provided for tightening the cap or pouch down around the instrumentation to prevent dislodgement or displacement, is not shown or suggested by McIntyre. The cinch ring is tubular in form and is provided with both adjustable and non-adjustable suture strings. The adjustable suture strings are pulled through openings in the cinch ring to tighten the cap or pouch vertically down on the instrumentation while the non-adjustable suture strings function to tie the cinch ring to the cap or pouch so that it does not slip away from the cap and adjustable sutures (page 6, lines 15 et seq.) and is effective to be cinched horizontally around the lower parts of the instrumentation adjacent the bone using the drawstrings.

Claims 7, 8 and 10 depend on claim 21.

Therefore, the rejection of claims 7, 8, 10 and 21 should be withdrawn.

Claim Rejections under 35 U.S.C. 103

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over McIntyre.

In formulating the rejection, the Examiner relied on McIntyre to teach all the limitations of the application as applied to claim 21 except that McIntyre “is silent as to

the cap/casing being made of GoreTex™, Dacron™ and polyurethane.” The Examiner determined it would have been an obvious choice of material.

However, as argued above with respect to claim 21, McIntyre does not teach all the limitations of the present invention as read by the Examiner. Therefore, the rejection based on obviousness should be withdrawn.

SUMMARY

It is submitted that all the claims that are under consideration are now allowable and notification to this effect is respectfully requested.

Respectfully Submitted

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Date


Evelyn M. Sommer
Registration No. 19, 603
Attorney for Applicant

Zhiqiang Liu
Registration No. 60,987

570 Lexington Avenue, 17th Floor
New York, NY 10022
Phone: 212-527-2657

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